

45 Ct.Cl. 418  
United States Court of Claims

LILIUOKALANI  
v.  
THE UNITED STATES

No. 30577  
|  
Decided May 16, 1910

**\*418** On the defendants' Demurrer.

The claimant became Queen of the Hawaiian Islands in January, 1891. Two years later she yielded her authority by an instrument abdicating the throne. After a brief provisional government the Republic of Hawaii was established. In 1898 the islands were annexed to and became a part of the United States. She now seeks to recover the value of the crown lands, which passed to the United States with the annexation of the islands.

West Headnotes (1)

[1] **Public Lands**

➡ Origin and Nature of Title in General

The crown lands of Hawaii formed an estate presumably vested in fee simple in the crown as distinguished from the personality of the sovereign, and yet so limited as to possession and descent as to be abhorrent to an estate in fee simple absolute. The Hawaiian statute of 1865 curtailed the title vested in the king to the purpose of maintaining the royal state and dignity; and the king approved the statute which divested the sovereign of whatever legal title he had theretofore had in the crown lands. After that, the lands belonged to the office and not to the individual; and, when the office of king ceased to exist, the crown lands became, like other lands, the property of the sovereignty, and on the annexation of the islands passed to the United States as part of the public domain.

1 Cases that cite this headnote

**\*419** *The Reporters'* statement of the case:

The facts alleged in the petition are sufficiently stated in the opinion of the court.

**Attorneys and Law Firms**

*Mr. S. S. Ashbaugh* (with whom was *Mr. Assistant Attorney-General John Q. Thompson*) for the demurrer.

*Mr. Sidney M. Ballou* opposed. *Kinney, Ballou, Prosser*, and *Anderson* were on the brief:

It is evident that this is not only an attempted confiscation of the interest of the petitioner but also that it contains a great deal of what can only be described as "special pleading." The crown land is described as a "portion of the public domain" whereas as we have already seen "it was clearly the intention of Kamehameha III to protect the lands \* \* \* from the danger of being treated as public domain" (*Estate of Kamehameha IV*, 2 Haw., 715), and in the entire history of Hawaii the word public had never been applied to the crown land, but on the contrary the word private had been repeatedly and emphatically applied. The crown land is then declared to have been heretofore the property of the Hawaiian Government, a declaration absolutely opposed to every fact in the history of the crown land beginning **\*420** with the express separation of the reserved lands of Kamehameha III into government and crown land, giving the great majority to the Hawaiian Government, the very object of the decision being to reserve to the King certain lands which could not by any possibility be treated as the property of the Government.

Even this constitutional provision, however, could not deny the existing trust in favor of the petitioner, the emphatic word "now" being clearly expressive of a present intention to terminate that trust by arbitrary fiat.

Since annexation there has been no pretense that the declaration of the constitutional convention was historically accurate, or that it was anything but arbitrary confiscation.

If, as fully established by the public history of Hawaii, the crown lands were originally the private lands of the monarch and the equitable life interest into which they were finally resolved was the private property of the petitioner, it is hardly necessary to cite authorities that this interest was not subject

to confiscation under international law. The subject has a pathetic interest from the fact that the King originally owning the entire public domain gave up the greater portion of it to the Government as government lands for the express purpose of preserving the remainder from the fate which finally overtook it.

"It may not be unworthy of remark that it is very unusual, even in cases of conquest, for the conqueror to do more than to displace the sovereign and assume dominion over the country. The modern usage of nations, which has become law, would be violated; that sense of justice and of right which is acknowledged and felt by the whole civilized world would be outraged if private property should be generally confiscated and private rights annulled." (Marshall, C. J., in *U. S. v. Percheman*, 7 Peters, 51, 86.)

When the manifest destiny of the United States demanded the acquisition of certain rights in the Isthmus of Panama as it demanded the possession of the strategic outpost controlling the North Pacific, it did not take it from the existing Government. In both cases there was a domestic revolution, and the revolutionary government turned over to the United States the sovereignty desired. With the necessity \*421 or propriety of the transaction or the degree of complicity of the United States in each individual instance this court has no concern. They are matters for the executive branch of the Government, and the judiciary can only accept the political status as determined by the executive. When, however, the transaction involves the rights of private property not subject to confiscation under the rules of international law, we submit that a different question arises and one of which this court has jurisdiction. If this method of annexation can be used not only for the transfer of sovereignty, but also for the extinguishment while in the hands of the temporary revolutionary government of any inconvenient rights of private property, it may readily be imagined to what length the doctrine may be carried in the future. The United States takes the sovereignty and all public property appertaining thereto free from any obligation save that dictated by the conscience of the legislative and executive branches, which in almost every case but the present has been met by generous remuneration, even for the public property acquired. Even in the present instance several abortive efforts have been made to recompense the petitioner in this case.

We are, of course, aware that this court does not undertake to enforce moral obligations of the United States, but that, in its capacity as a court of equity, it acts only in accordance with recognized equitable principles. Nevertheless, it is

equally important to remember that a court of equity is primarily a court of conscience, and that the claim of an unconscientious retention of the rights of the petitioner is one which particularly appeals to such a court. In the present case we believe the following well recognized principles to be applicable:

"Acquisition of trust property by a volunteer or purchaser with notice.

"Wherever property, real or personal, which is already impressed with or subject to a trust of any kind, express or by operation of law, is conveyed or transferred by the trustee, not in the course of executing and carrying into effect the terms of an express trust, or devolves from a trustee to a third person, who is a mere volunteer, or who is a purchaser \*422 with actual or constructive notice of the trust, then the rule is universal that such heir, devisee, successor, or other voluntary transferee, or such purchaser with notice acquires and holds the property subject to the same trust which before existed, and becomes himself a trustee for the original beneficiary. Equity impresses the trust upon the property in the hands of the transferee or purchaser, compels him to perform the trust if it be active, and to hold the property subject to the trust, and renders him liable to all the remedies which may be proper for enforcing the rights of the beneficiary. It is not necessary that such transferee or purchaser should be guilty of positive fraud or should actually intend a violation of the trust obligation; it is sufficient that he acquires property upon which a trust is in fact impressed, and that he is not a bona fide purchaser for a valuable consideration and without notice. This universal rule forms the protection and safeguard of the rights of beneficiaries in all kinds of trust; it enables them to follow trust property--lands, chattels, funds of securities, and even of money--as long as it can be identified, into the hands of all subsequent holders who are not in the position of bona fide purchasers, for value and without notice; it furnishes all those distinctively equitable remedies which are so much more efficient in securing the beneficiary's rights than the mere pecuniary recoveries of the law." (3 Pomeroy Eq. Juris., sec. 1048.)

"Upon similar principles, wherever the property of a party has been wrongfully misapplied, or a trust fund has been wrongfully converted into another species of property, if its identity can be traced, it will be held, in its new form, liable to the rights of the original owner, or cestui que trust. The general proposition, which is maintained both at law and in equity upon this subject, is that if any property, in its original

state and form is covered with a trust in favor of the principal, no change of that state and form can divest it of such trust, or give the agent or trustee converting it or those who represent him in right (not being bona fide purchasers for a valuable consideration without notice) any more valid claim in respect to it than they respectively had before such change." (2 Story Eq. Juris., sec. 1258.)

It is with the deprivation of the petitioner's property right we are concerned. It is not denied that strenuous efforts have been made to deprive her of this right, legally as well as in fact. With the exception of a brief period of martial law, the courts of the provisional government and the Republic of Hawaii were open and it must have been foreseen that the petitioner's claim to the profits of the crown land \*423 was too obvious to be resisted. The only remedy was the insertion of the express arbitrary denial of the claim in the constitution of the Republic itself, so that the courts sitting under the same constitution could not recognize the claim. The declaration in question, as has already been shown, sufficiently appears by its language to be the arbitrary fiat of the sovereign power. So far as the claim that the crown land was "heretofore \* \* \* the property of the Hawaiian Government," unless the word "heretofore" be restricted to the eighteen months of the provisional government, it is sufficiently negated by the language of the act of 1845 and the act of 1865. Nor was it pretended that there had not been a trust previously existing in favor of the petitioner and an equitable right in her to the rents, issues, and profits, the emphatic word "now" being sufficient to show that the declaration was intended as a confiscation of those rights.

It is not denied that this enactment was sufficient to preclude petitioner from seeking relief in any court existing under the Republic of Hawaii. The fear of this claim seems to have survived annexation, however, as the same provision was placed by Congress in the organic act of the new Territory. It appears to us that the validity of the petitioner's present claim depends on the answer to the following questions:

- (1) Was the petitioner's right extinguished by the constitutional provision of the Republic of Hawaii or merely suspended?
- (2) Was it extinguished by the confiscatory declaration in the organic act?

To the first question it seems as though a court of equity and good conscience could return but one answer. If the

petitioner's acknowledged equitable right is taken and held by force, the enforcement of such right may be suspended through the impotency of the courts to reach it for the time being, but when the parties, i. e., the equitable claimant and the holder of the legal title, come again within the influence of equitable jurisdiction and a court of equity has power to act in the premises, surely every consideration of equity and good conscience demands that the equitable claimant, suing \*424 under well recognized equitable principles, shall be given her rights. No court of equity, in applying the general principles above quoted, has ever recognized the principle that if any intermediate holder of the property is for any reason beyond the process of the court the equities of the beneficiary are forever extinguished.

The answer to the second question is equally apparent. The petitioner can not be deprived of her vested interest by any statutory declaration such as that contained in section 99 of the organic act of the Territory of Hawaii. That this would be a deprivation of property without due process of law, contrary to the constitutional provision, is so obvious that, until the proposition is challenged we are content to leave it without argument.

### Opinion

BOOTH, J., delivered the opinion of the court:

This is a demurrer to claimant's petition. The claimant, Liliuokalani, was formerly Queen of the Hawaiian Islands. Her cause of action is predicated upon an alleged "vested equitable life interest" to certain lands described in the petition, known as "crown lands," of which interest she was divested by the defendants. It is conceded that the absence of such an interest rendered the crown lands subject to the usual transmission of title appurtenant to a change of sovereignty. The solution of the question involves a detailed examination of the various acts of the Hawaiian legislative body and reference to various sections of the Hawaiian constitutions, which for convenience will be set forth as an appendix to this opinion.

The origin of the crown lands and history connected therewith is epitomized by Justice Robertson in an exhaustive opinion in 2 Haw., 715. Previous to the reign of Kamehameha III a system of land tenure akin to the ancient feudal system prevailed in the islands. In 1839 the dissatisfaction and disputes engendered by the payment of rents, the rendition of personal service, etc., imposed upon landholders, encouraged

the King to bring about a settled policy with reference to land titles. In 1840 Kamehameha III granted the first constitution, in which it is recited that: \*425 "Kamehameha I was the founder of the Kingdom, and to him belonged all the land from one end of the islands to the other, though it was not his own private property. It belonged to the chiefs and people in common, of whom Kamehameha I was the head and had the management of the landed property." In another clause it is provided that all lands forfeited for nonpayment of taxes shall revert to the King. (Fundamental Laws of Hawaii.) In 1846 a board of land commissioners was appointed by law, charged with the duty of dividing the rights of the various individuals in lands, and quieting titles thereto, and finally, in March, 1848, the King "signed and sealed two instruments contained in the Mahele Book," by which he demised specified lands described therein to the chiefs and people and reserved unto himself the lands now in suit, then and ever afterwards known as the crown lands. On June 7, 1848, the legislature for the islands confirmed the action of the King, and thereafter all portions of the royal domain except the reserved crown lands were treated as public domain and managed and disposed of by appropriate legislation. The title to the crown lands was vested in the Sovereign; he leased and alienated the same at his pleasure; the income and profits therefrom were his without interference or control. In January, 1865, the unlimited latitude allowed the King in the control of the crown lands found them charged with mortgages to secure sums of money which threatened their extinguishment, and the legislature, by the act of January 3, 1865, relieved the lands from the oppression of the mortgages, by the issuance of bonds, provided against their alienation, and put their management and control in the hands of commissioners as provided in the act. Subsequently, on July 6, 1866, the legislature relieved the crown lands from the liquidation of the bonds previously provided for, and the Government assumed and paid the mortgage debt.

The claimant became Queen of the islands on January 20, 1891, succeeding her brother, King Kalakaua. On January 17, 1893, she yielded her authority over the islands by an instrument in writing, abdicated her throne, and was succeeded in authority by a provisional government. On July \*426 4, 1894, said provisional government was succeeded by a government known as the Republic of Hawaii, and thereafter the Hawaiian Islands were peaceably, upon request, on August 12, 1898, annexed to and became a part of the United States of America.

The history of the Hawaiian Islands from the earliest time to the ascension of Kamehameha I is the usual story of conquest. Kamehameha I established a monarchy; his title and sovereignty was the usual one of conquest, and while the attendant civilization was much advanced the King retained his sovereign authority and prerogatives. The act of Kamehameha III in 1848 was, as before observed, the culmination of numerous dissensions as to land tenures, and the King divided the public domain as hereinbefore set forth. Since 1848 the crown lands have descended to the reigning sovereign. At the April term of the Supreme Court of Hawaii in 1864 the nature and extent of the King's title in the crown lands was squarely before the court, and the court in an exceedingly able opinion held that under said act "the lands descended in fee, the inheritance being limited, however, to the successors to the throne, and each successive power may regulate and dispose of the same according to his will and pleasure, as private property, in like manner as was done by Kamehameha III."

Taking the language of the court we find an estate in lands presumably vested in fee simple in so far as the Crown is concerned, as distinguished from the personality of the Sovereign, and yet limited as to possession and descent by conditions abhorrent to a fee-simple estate absolute. The act of 1865 further curtails the title vested in the King. The preamble of the act recites expressly the nature and extent of the King's tenure, "for the purpose of maintaining the royal state and dignity," followed by appropriate legislation to thereafter prevent their alienation or incumbrance.

The act of 1865 to become effective under the Hawaiian constitution required the approval of the King. (Fundamental Laws of Hawaii, p. 172.) On January 3, 1865, Kamehameha V approved the statute which expressly divested the King of whatever legal title or possession he \*427 theretofore had in or to the Crown lands. (6 Haw., 195--208.) The Hawaiian Government in 1865 by its own legislation determined what the court is now asked to determine.

The decision of the court in 2 Haw., *supra*, was some time previous to the passage of the act of 1865, and although the court sustained the right of dower in the widow of the King, it is clear from the opinion that the crown lands were treated not as the King's private property in the strict sense of the term. While possessing certain attributes pertaining to feesimple estates, such as unrestricted power of alienation and incumbrance, there were likewise enough conditions surrounding the tenure to clearly characterize it as one

pertaining to the support and maintenance of the Crown, as distinct from the person of the Sovereign. They belonged to the office and not to the individual. Significant in this connection is the transaction with Claus Spreckels in July, 1882. Her Highness Ruth Keelikolani, sister and heir of Kamehameha V, though never succeeding to the throne, conveyed to Spreckels all her interest in the crown lands. The sovereign authorities hastened to dispute the transaction, and subsequent legislation by way of compromise restored the attempted conveyance to the general body of the crown lands. (Appendix, p. 8.) Since 1865, so far as the record before us discloses, the character of the crown lands has not been changed; they have passed to the succeeding monarch. The income, less expense of management, has been used to support the royal office and treated as belonging to the Crown. All other property of the King has uniformly passed to his heirs regardless of his royal successor.

The court in 2 Haw., 722, in commenting upon the motives of the King in executing the conveyances of March 8, 1848, attributes the establishment of the crown land estate to a desire to prevent the impoverishment of the Sovereign in the event of a successful foreign invasion. This statement has been seized upon and assiduously emphasized by the claimant. It is not in harmony with the detailed history given by the court in its opinion. On page 719 the court says: "It was the imperative necessity of separating and defining the rights of the several parties interested in the \*428 lands which led to the institution of the board of land commissioners, and to the division made by the King himself, with the assistance of his privy council." It was in fact the usual contest between the monarch and his people. Certainly under a monarchy it would be unusual for the reigning sovereign to divest himself of all landed property; always jealous of the dignity attached to the Crown they were likewise alert in securing sufficient revenue to support its royal pretensions.

Kamehameha III reorganized the Government, granted a constitution, organized executive departments, established courts, and otherwise extended the liberties of his people and protected their rights of property. Suppose that during the progress of his reign a pretender for the throne had successfully established his claim and deposed the monarch without changing the existing governmental conditions. Is it possible that Kamehameha III could have recovered the rents

and profits from the crown lands during the remainder of his life? (*Fundamental Laws of Hawaii*.)

It seems to the court that the crown lands acquired their unusual status through a desire of the King to firmly establish his Government by commendable concessions to his chiefs and people out of the public domain. The reservations made were to the Crown and not the King as an individual. The crown lands were the resourceful methods of income to sustain, in part at least, the dignity of the office to which they were inseparably attached. When the office ceased to exist they became as other lands of the Sovereignty and passed to the defendants as part and parcel of the public domain. (*O'Reilly de Camara v. Brooke*, 209 U. S., 45; *Hijo v. United States*, 194; *Sanchez v. United States*, 216 U. S., 167.)

The constitution of the Republic of Hawaii, as respects the crown lands, provided as follows:

"That portion of the public domain heretofore known as crown land is hereby declared to have been heretofore, and now to be, the property of the Hawaiian Government, and to be now free and clear from any trust of or concerning the same, and from all claim of any nature whatsoever upon the rents, issues, and profits thereof. It shall be subject to alienation and other uses as may be provided by law. All valid leases thereof now in existence are hereby confirmed."

\*429 Section 99 of the organic act of 1900 (31 Stat. L., 161) adopts substantially the same language. We have not entered into a discussion of the defenses predicated upon the above provisions of law, believing the case disposed of before we reached them. It is, however, worthy of note that the organic act of 1900 puts an end to any trust--if the same possibly existed--and the petition herein was not filed until January 20, 1910, more than six years thereafter.

Demurrer sustained, with leave to the claimant to amend her petition within ninety days.

#### All Citations

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